

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER WILLIAMS,

Plaintiff,

No. CIV S-04-2515 FCD EFB P

vs.

ANDREASON, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

On November 29, 2004, plaintiff commenced this action alleging that defendants violated his civil rights. *See* 42 U.S.C. § 1983. On July 7, 2009, after the court's pretrial order was returned as undeliverable by mail because plaintiff is deceased, the court ordered defendant to file a proof of service of the suggestion of death on the nonparty successors or representatives of plaintiff, or a declaration indicating why service was not possible and detailing the efforts made to achieve it. Dckt. No. 59. On August 6, 2009, defendants' counsel filed a declaration detailing her attempts to serve deceased plaintiff's next of kin with a statement noting his death. Defendants' filing triggered the 90-day period within which a person who wishes to substitute for the deceased may file a motion for substitution. Fed. R. Civ. P. 25(a)(1). Dismissal is mandatory if no such motion is filed within the 90-day period. *Id.*

////

1 The court finds that 90 days have passed since defendants filed the declaration, and no  
2 motion for substitution has been filed.

3 Accordingly, it hereby is RECOMMENDED that this action be dismissed pursuant to  
4 Rule 25(a)(1) of the Federal Rules of Civil Procedure.

5 These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days  
7 after being served with these findings and recommendations, any party may file written  
8 objections with the court and serve a copy on all parties. Such a document should be captioned  
9 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
10 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
11 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: November 10, 2009.

13   
14 EDMUND F. BRENNAN  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26